

# Housing and Property Chamber First-tier Tribunal for Scotland

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## REPAIRING STANDARD ENFORCEMENT ORDER

**Chamber Reference number: FTC/HPC/RT/18/3539**

**Parties:**

1. Karen Macintyre and Allan Macintyre both residing at 11 Commonsie Street, Airdrie, ML6 6NQ ("the Tenants") and
2. Kenneth Davidson residing at 78, Breadie Drive, Milngavie, Glasgow G62 6LR ("the Landlord") per his nominated representative in terms of Rule 10 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules"), Ms. Lorna Davidson residing at 6, Muirlees Crescent, Milngavie, Glasgow G62 7JA ("the Landlord's Representative"), the Landlord and the Tenants together referred to as "the Parties".

**Property:** 11 Commonsie Street, Airdrie, ML6 6NQ being the subjects registered in the Land Register for Scotland under Title Number LAN66485 ("the Property")

**Tribunal Members**

Karen Moore (Chairperson)

Geraldine Wooley (Ordinary Member)

**Notice to Landlord**

Kenneth Davidson residing at 78, Breadie Drive, Milngavie, Glasgow G62 6LR

Whereas in terms of its decision dated 8 April 2019, the First-tier Tribunal for Scotland determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and, in particular, that the Landlords have failed to comply in respect of Sections 13 (1) (a), 13 (1) (b), 13(1) (c) and 13(1) (f) of the Act and have failed to ensure that the Property is wind and watertight and reasonably fit for human habitation, that the structure and exterior of the Property (including drains, gutters and

external pipes) is in a reasonable state of repair and in proper working order, that the Landlord has failed to ensure that the installations in the Property for the supply of electricity is in a reasonable state of repair and in proper working order and that the Landlord has failed to ensure that the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, the First-tier Tribunal now requires the Landlords to carry out the following works or other such works as are necessary for the purposes of ensuring that the Property meets the Repairing Standard and that any damage caused by carrying out of the works in terms of the Order is made good.

The Landlord must on or before **20 May 2019**:-

1. Instruct a Royal Institute of Chartered Surveyors registered building surveyor (i) to carry out a full inspection of the Property and (ii) to provide a fully documented report on the Property which should include a report on the condition of the windows, the whole roof and its supports and trusses, the guttering and downpipes, the front door surround, the ceiling in the bedroom to the rear of the Property and the dampness in both bedrooms ("the Survey Report"), and (iii) to recommend works to all parts of the Property, including renewal or replacement, if necessary, to ensure that the dampness in the Property is eradicated and that the Property is made wind and watertight and is in a reasonable state of repair;
2. Submit the Survey Report to the Tribunal and provide a copy to the Tenants;
3. Instruct a Scottish Building Federation or Federation of Master Builders registered building contractor or contractors capable of providing a 10- year guarantee to carry out and complete all works recommended by the Survey Report and confirm in writing to the Tribunal and the Tenants the identity of the building contractor or contractors, the date on which the works will commence and the estimated date for their completion;
4. Repair or replace the ceiling in the bedroom to the rear of the Property;
5. Repair or replace the glazing in the living room window;
6. Instruct a SELECT, NAPIT or NICEIC electrician (i) to carry out a full inspection of the electrical installation throughout the Property, the purpose of which inspection is to ensure that the electrical installation in the Property and the Landlord's appliances therein are safe and fit for purpose (ii) to repair, replace or renew any parts which require to be renewed, replaced or repaired to ensure the installation is fully functioning and meets current regulatory standards and (iii) thereafter to issue a

external pipes) is in a reasonable state of repair and in proper working order, that the Landlord has failed to ensure that the installations in the Property for the supply of electricity is in a reasonable state of repair and in proper working order and that the Landlord has failed to ensure that the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, the First-tier Tribunal now requires the Landlords to carry out the following works or other such works as are necessary for the purposes of ensuring that the Property meets the Repairing Standard and that any damage caused by carrying out of the works in terms of the Order is made good.

The Landlord must on or before **6 July 2019**:-

1. Instruct a Royal Institute of Chartered Surveyors registered building surveyor (i) to carry out a full inspection of the Property and (ii) to provide a fully documented report on the Property which should include a report on the condition of the windows, the whole roof and its supports and trusses, the guttering and downpipes, the front door surround, the ceiling in the bedroom to the rear of the Property and the dampness in both bedrooms ("the Survey Report"), and (iii) to recommend works to all parts of the Property, including renewal or replacement, if necessary, to ensure that the dampness in the Property is eradicated and that the Property is made wind and watertight and is in a reasonable state of repair;
2. Submit the Survey Report to the Tribunal and provide a copy to the Tenants;
3. Instruct a Scottish Building Federation or Federation of Master Builders registered building contractor or contractors capable of providing a 10- year guarantee to carry out and complete all works recommended by the Survey Report and confirm in writing to the Tribunal and the Tenants the identity of the building contractor or contractors, the date on which the works will commence and the estimated date for their completion;
4. Repair or replace the ceiling in the bedroom to the rear of the Property;
5. Repair or replace the glazing in the living room window;
6. Instruct a SELECT, NAPIT or NICEIC electrician (i) to carry out a full inspection of the electrical installation throughout the Property, the purpose of which inspection is to ensure that the electrical installation in the Property and the Landlord's appliances therein are safe and fit for purpose (ii) to repair, replace or renew any parts which require to be renewed, replaced or repaired to ensure the installation is fully functioning and meets current regulatory standards and (iii) thereafter to issue a

complete and compliant electrical installation condition report (“EICR”) and/or an Electrical Installation Certificate in accordance with the Scottish Government statutory guidance on electrical installations and appliances in private rented property and

7. Make good all décor damaged as a result of these works.

Note to Landlord:-

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Further, in terms of Section 28(1) of the Housing (Scotland) Act 2006, a landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement Order commits an offence liable on summary conviction to a fine not exceeding Level 3 of the standard scale, and in terms of Section 28(5) of that Act, also commits an offence if he or she enters into a tenancy or occupancy agreement in relation to a house at any time during which a Repairing Standard Enforcement Order has effect in relation to the house.

In Witness Whereof these presents printed on this and the two preceding pages are subscribed by Karen Moore, Chairperson of the tribunal, at Glasgow on 8 April 2019 before this witness, Norman William Moore, solicitor, 11, Muirfield Business Centre, South Muirhead Road, Cumbernauld, G67 1AX

N Moore

K Moore

# Housing and Property Chamber First-tier Tribunal for Scotland

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## **First-tier Tribunal for Scotland (Housing and Property Chamber)**

STATEMENT OF DECISION: in terms of Section 24 (1) of the Housing (Scotland) Act 2006 ("the Act") in respect of an application under Section 22(1) of the Act

**Chamber Reference number: FTC/HPC/RT/18/3539**

### **Parties:**

1. Karen Macintyre and Allan Macintyre both residing at 11 Commonsie Street, Airdrie, ML6 6NQ ("the Tenants") and
2. Kenneth Davidson residing at 78, Breadie Drive, Milngavie, Glasgow G62 6LR ("the Landlord") per his nominated representative in terms of Rule 10 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules"), Ms. Lorna Davidson residing at 6, Muirlees Crescent, Milngavie, Glasgow G62 7JA ("the Landlord's Representative"), the Landlord and the Tenants together referred to as "the Parties".

**Property:** 11 Commonsie Street, Airdrie, ML6 6NQ being the subjects registered in the Land Register for Scotland under Title Number LAN66485 ("the Property")

### **Tribunal Members**

Karen Moore (Chairperson)

Geraldine Wooley (Ordinary Member)

### **Decision**

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property, determined that the Landlord has not complied with the duty imposed by Section 14 (1) (b) of the Act in respect that the Property meets the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b) 13(1) (c) and 13(1) (f) of the Act and that for the reasons set out below.

## Background

1. By application received between 27 December 2018 and 29 January 2019 ("the Application"), the first-named tenant on behalf of both Tenants applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on him by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in respect that the Property does not meet the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b), 13(1) (c) and 13(1) (f) of the Act.
2. Specifically, the Application stated that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard as:-
  - i) The roof has holes in it and is badly leaking;
  - ii) The ceiling in the spare bedroom has collapsed;
  - iii) The front door would not open;
  - iv) The gutters and downpipes are all blocked
  - v) The Property needs to be re-wired;
  - vi) The living room windows are cracked and need to be replaced;
  - vii) The Property needs to be redecorated and cleaned following a fire in the Property;
  - viii) There are damp patches in every bedroom;
  - ix) Only one bedroom in the Property is usable;
  - x) There is no satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire in the Property.
3. A Convener of the Chamber, with delegated powers under Section 96 of the Housing (Scotland) Act 2014 and Section 21 (8A) of the Act, having considered the application in terms of Section 23(3) of the Act and having determined to continue the Application in terms of Schedule 2, Paragraph 7 (2) of the act, intimated to all parties by Notice of Referral, a decision under Section 23 (1) of the Act to refer the Application to a tribunal, and, in terms of Schedule 2, Paragraph 1 of the Act fixed an Inspection and Hearing for 29 March January 2019 at 10.00 a.m. and 11.30 a.m., respectively.
4. The Landlord submitted written representations which were copied to the Tenants.

## Inspection

5. The Inspection took place on 29 March 2019 at 10.00 a.m. at the Property. Both Tenants were present. Neither the Landlord nor the Landlord's Representative was present.
6. The Tribunal inspected the parts of the Property referred to in the Application namely:-
  - i) The roof;
  - ii) The ceiling in the spare bedroom;
  - iii) The front door;
  - iv) The gutters and downpipes;
  - v) The electrical installation and wiring insofar as it was possible to do so;
  - vi) The living room window panes and all window frames;
  - vii) The décor in the kitchen and living room following the fire in the Property;
  - viii) The damp patches in the bedrooms and;
  - ix) The existence of working mains wired smoke detectors in the Property.
7. At the Inspection, the Tribunal took digital photographs which photographs form the Schedule annexed to this decision.

## Hearing

8. Following the Inspection, a Hearing was held at the Glasgow Tribunal Centre, 22, York Street, Glasgow G2 8GT on the same day at 11.30 a.m. The Tenants and the Landlord's Representative were present.
9. The Landlord's Representative advised the Tribunal that although she is a solicitor, she was representing the Landlord in the personal capacity as his daughter. She advised the Tribunal that the Landlord's position is that he accepts that works are required to the Property and that the Landlord proposes that the hearing be continued for a period of 6 weeks to allow him to agree a schedule of works with the Tenants and indicated that, in the Landlord's view, some of the works required were the responsibility of the Tenants in terms of the tenancy agreement. The Tribunal noted that this is the position as set out in the written submission.
10. The Tribunal advised the Landlord's Representative that, in terms of Section 24 (1) of the Act, if a tribunal finds that a landlord has failed in its duty under Section

14(1) of the Act, the tribunal must impose a Repairing Standard Enforcement Order and so, having been satisfied from the Inspection that the Property does not meet the statutory repairing standard and having heard that the Landlord accepts that works are required, Tribunal would not continue matters as requested. The Tribunal also pointed out to the Landlord's Representative that Section 17 of the Act prohibits the Landlord from contracting out of his statutory duty in terms of Section 14 of the Act.

11. The Tribunal inquired of the Parties if there was a written tenancy agreement as none had been lodged with the Application, and the Landlord's Representative produced a copy of a 12 page rental agreement bearing the names of the Parties on the first page and the signatures of the Parties on the last page which she understood to be the tenancy agreement between the Parties. The Tenants disputed that they had received the whole of this agreement and maintained that they had only been given the first and last pages by the Landlord.
12. The Hearing then proceeded, dealing with each item complained of by the Tenants in turn.
13. With regard to the complaint that the Property is not wind and watertight and reasonably fit for human habitation, the Landlord's Representative explained that the Landlord's general position is that it is his understanding that all of the works required to the Property emanate from the fire which was caused by the Tenants and that the Landlord undertook to carry out works required by him in terms of the tenancy agreement. The Landlord's Representative advised the Tribunal that it was her understanding that the roof works had only recently been intimated to the Landlord and that he had attempted to contact the Tenants to arrange for the works to be carried out to no avail. Her position is that the Landlord called to the Property on two separate occasions but could not gain access and that there had been a lengthy text message exchange between the Parties. The Landlord's Representative advised the Tribunal that earlier messages from the Tenants might have been sent to a phone which the Landlord no longer used and that as the Landlord had been ill during 2018, messages from the Tenants might have been overlooked. The Landlord's Representative went on to advise the Tribunal that the Landlord had obtained quotes for work to the roof and provided copies of these to the Tribunal. The Tribunal noted that works quoted for were for "recent storm damage" which did not accord with the Landlord's assertion that the works

are fire damage. The Tribunal took the opportunity to show the Landlord's Representative a digital photograph (number [7 ] ) on the Schedule annexed) taken at the Inspection illustrating the damage to the bedroom ceiling, in respect of which the Landlord's Representative noted the position.

14. The Tenants advised the Tribunal that the fire which occurred on 24 September 2018 had been caused by their cat knocking over a burning candle and that fire damage was caused to the living room and kitchen. The Tenants advised the Tribunal that the roof and gutters had been in the same poor condition since they took entry to the Property in 2010 and that they had frequently called upon the Landlord to carry out repairs but the Landlord advised them that he did not have the funds to do so. The Tenants advised the Tribunal that there has been a hole in the second bedroom ceiling since they moved into the Property which had been boarded up since that time. With regard to contact from the Landlord, the Tenants advised the Tribunal that, since the fire, the Landlord had sent text messages and had called at the Property on one occasion, but, in their view, this was in response to the Tenants' decision to withhold rent and not in response to their request that repairs be carried out as no discussion took place in respect of repairs and the Landlord did not inspect or view any part of the Property other than the living room to ascertain the condition of the Property.
15. In respect of the complaint that the structure and exterior of the Property, (including drains, gutters and external pipes) is in a reasonable state of repair and in proper working order, the Landlord's Representative accepted that work required to be carried out. The Tenants again advised the Tribunal that the gutters had been in the same poor condition since they took entry to the Property in 2010 and that they had frequently called upon the Landlord to carry out repairs without success. The Tenants explained to the Tribunal that they had purchased and fitted a new front door to the Property as the door in situ when they took entry would not open or close properly. The Landlord's Representative did not dispute this fact.
16. In respect of the complaint that the installation in the Property for the supply of electricity is not in a reasonable state of repair and in proper working order, the Tribunal inquired of the parties if there was a current electrical installation condition report ("EICR") for the Property, the Tenants could not recall having

received an EICR. The Landlord's Representative advised the Tribunal that as far as she was aware, the Property had been rewired shortly before the tenancy commenced but she did not know if the a current EICR was in place.

17. In respect of the complaint that the Landlord has failed to ensure that the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, the Tenants advised the Tribunal that there had been one battery operated smoke detector in the Property before the fire and that, after the fire, the Fire and Rescue Service had installed two new battery operated smoke detectors. The Landlord's Representative advised the Tribunal that it was her understanding that the Tenants had withdrawn this part of their complaint and referred the Tribunal to a letter from the Tenants to the Tribunal indicating that if they did not want to pursue this. The Tribunal had regard to this letter in the context of the Application and the correspondence from the Chamber's administrative staff to the Tenants, which correspondence requested that the Tenants to clarify if they had notified the Landlord of their complaint in respect of lack of smoke detectors and took the view that the Tenants' position was that if they had to notify or re-notify the Landlord, they would not pursue this point. The Tribunal noted that the application form submitted by the Tenants as part of the Application listed failure to ensure that the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and so the Tribunal was satisfied that the Landlord had been notified of this complaint. The Tribunal advised the Parties that, in any event, the Tribunal had powers in terms of the Act to proceed with the Application of its own accord even if the Tenants wished to withdraw the Application full, and for the avoidance of doubt, the Tribunal advised the Parties that it intended to address this part of the Application. The Tribunal also noted that a gas safety certificate is required every year for the property.
18. As the Landlord's Representative had no instructions in respect of the EICR and the smoke detectors, the Tribunal adjourned the Hearing to allow her to contact the Landlord by phone and takes his instructions Following the adjournment, the Landlord's Representative advised the Tribunal that there is no current EICR for the Property and that a battery operated smoke detector was in the Property. She advised further that the Landlord's position is that he had thought that it was the Tenants responsibility to ensure that it was operational. The Landlord's Representative was at great pains to assure the Tribunal that the Landlord is not

an irresponsible landlord but a naive one who is not fully aware of his statutory responsibilities. In response to the Tribunal's question about landlord registration, the Landlord's Representative confirmed that the Landlord was registered in terms of the Anti-social Behaviour etc (Scotland) Act 2004. She was also at great pains to stress that the Landlord intended to carry out repairs and renewed her request for a continuation of the Hearing to allow the parties to agree a schedule of works as the Landlord did not want to explore other options, although she did accept when asked by the Tribunal that rent payments and the Repairing Standards are not co-dependent.

19. With regard to the comment in the Landlord's written representation that works could not be carried out because of their caravan which was parked in the shared driveway, the Tenants confirmed that this would be removed immediately if required and disputed that a request to move it to allow for the erection of scaffolding had ever been made of them by the Landlord.
20. The Tribunal having indicated to the Parties that it was of a mind to making a finding of failure to comply, the Landlord having accepted that repairs are required, and so must impose a Repairing Standard Enforcement Order (RSEO). The Tribunal then inquired of the Landlord's Representative if she had a view in respect of a timescale to carry out the works. The Landlord's Representative suggested 6 months, however, the Tribunal, taking into account that the Landlord has already had a significant time to instruct works and that the quotes he received infer that scaffolding is available, took the view that a shorter period is more appropriate.

### **Summary of the Issues**

21. The issues to be determined by the Tribunal are whether or not the Property meets the Repairing Standard in respect of Sections 13(1)(a), 13(1)(b), 13(1)(c) and 13(1)(f) of the Act at the date of the Inspection and Hearing.

### **Findings of Fact**

22. Mr. Kenneth Davidson residing at 78, Breadie Drive, Milngavie, Glasgow G62 6LR is the owner of the Property in terms of Land Certificate LAN66485 in his favour. Although the Tenants dispute that they had been given a full copy of the tenancy agreement produced by the Landlord's Representative at the Hearing,

the Tribunal is satisfied by the actions of the parties that a tenancy, although not necessarily a short assured tenancy, has existed between the parties since October 2010 and that Kenneth Davidson is the Landlord and Karen Macintyre and Allan Macintyre are the Tenants of the Property.

23. The Property is a two storey semi-detached property constructed circa 1950. The Property is brick built with roughcast exterior and a pitched slate roof. The Property comprises a living room, a kitchen, hallway, two bedrooms and a bathroom with garden to the front and rear and a shared driveway to the side.

24. From the Inspection, the Tribunal found the following in respect of matters specifically complained of in the Application:

- i) The roof slates are missing or have slipped and so the roof appears to have holes in it and is badly leaking. In the Tribunal's professional opinion, the disrepair to the roof is of an age and most likely predates the commencement of the tenancy;
- ii) The ceiling in the spare bedroom has collapsed in part and a rudimentary repair has been effected, which repair does not appear to prevent water ingress;
- iii) There is a gap above the front door frame which would appear to allow wind and water ingress;
- iv) The gutters and downpipes appear to be blocked and are in a generally poor condition and do not appear to function properly;
- v) The electricity consumer unit is of an age which does not suggest that the Property has been re-wired recently or immediately before the commencement of the tenancy;
- vi) The living room window panes are cracked and need to be replaced;
- vii) The general condition of the windows and frames in the property is poor;
- viii) There are damp patches on the walls and ceilings of both bedrooms;
- ix) There is no satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire in the Property;
- x) There appears to be no current electrical installation condition report ("EICR") for the Property;
- xi) The décor in the Property requires to be refreshed following the fire and
- xii) There is no carbon monoxide detector in the Property.

With regard to points xi) and xii), the Tribunal notes that décor of the Property following the fire is outwith the scope of the Repairing Standard and the lack of a

carbon monoxide detector is not specified in the Application. However, the Landlord's attention is drawn to the fact that the Act requires a carbon monoxide detector to be installed. The Landlord's attention is also drawn to the fact that the Act requires there to be a current gas safety certificate in place.

25. From the Hearing, the Tribunal found the Tenants to be straightforward and truthful and accepted their position and submission that the Landlord had been notified of the repairs required to the roof, gutters and dampness before the fire and that he had failed to take any action. The Tribunal accepted the Tenants submission that the Landlord only contacted them after rent was unpaid due to the Tenants withholding rent in or around October 2018.
26. With regard to the Landlord's position as stated in his written representation and as submitted by Landlord's Representative at the Hearing, the Tribunal had difficulty in finding his evidence and that put forward on his behalf to be reliable. The Tribunal found the Landlord's position to be contradictory as although the Landlord's Representative advised the Tribunal that the Landlord's understanding is that of the works required to the Property were caused by the fire, the quotes which she produced showed that the Landlord has instructed works in respect of storm damage. The Tribunal noted the Landlord's Representative's submission that the Landlord is not irresponsible, but, the Tribunal had difficulty in reconciling this with the fact that, when becoming aware of the fire at the Property, he took no steps to contact his Tenants and was only galvanised into action when rent was withheld. The Tribunal had regard to the final point in the Landlord's written representation that there are arrears of rent and to the Landlord's Representative's submission that the Landlord did not want to explore other options, and reminds the Landlord that withholding rent is a legitimate remedy open to a tenant in cases where a property is in disrepair. In the Tribunal's view, the Landlord's actions are not the actions and responses of a responsible landlord but are the actions and responses of a landlord whose focus is purely on the financial return from the tenancy with no regard to the health and safety of his tenants and with total disregard of his statutory duties.
27. The Tribunal accepted that, as a solicitor, the Landlord's Representative although not acting in that particular capacity in the proceedings, was in a difficult position in representing the Landlord and putting forward his position to the Tribunal. However, the Tribunal was surprised that the Landlord's Representative put

forward arguments which were clearly at odds with the relevant part of the Act and so were bound to fail, having no legal basis. In the Tribunal's view, even though the Landlord's Representative was not acting as legal advisor to the Landlord, the Tribunal found it surprising that she put forward the Landlord's position that it was acceptable for him to derogate his statutory duties and attempt to pass these duties onto the Tenants.

**Decision of the tribunal and reasons for the decision.**

28. The Tribunal's decision is based on the Application with supporting documents, the Inspection and the Hearing.

29. In respect of the complaint in terms of Section 13(1) (a) that the Property is not wind and watertight and reasonably fit for human habitation, the Tribunal found that the poor condition of the roof, the front door surround, the gutters and the downpipes, condition of the windows and window frames and the dampness in the upper part of the Property is such that the Property is not wind and watertight and is not reasonably fit for human habitation. Accordingly, the Tribunal found that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

30. In respect of the complaint in terms of Section 13(1)(b) that the Landlord has failed to ensure that the structure and exterior of the Property (including drains, gutters and external pipes) is in a reasonable state of repair and in proper working order, the Tribunal found that the poor condition of the front door surround, the gutters and the downpipes and windows and window frames is such that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

31. In respect of the complaint in terms of Section 13 (1) (c) that the Landlord has failed to ensure that the installations in the Property for the supply of electricity is in a reasonable state of repair and in proper working order, there being no EICR available to satisfy the Tribunal that the installations in the Property for the supply of electricity is in a reasonable state of repair and in proper working order, the Tribunal found that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

32. In respect of the complaint in terms of Section 13 (1) (f) that the Landlord has failed to ensure that the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, there being no compliant smoke or heat detectors in the Property, the Tribunal found that at the date of the Inspection and Hearing the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
33. The decision is unanimous.

#### **Repairing Standard Enforcement Order**

34. Having determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b), the tribunal proceeded to make an RSEO as required by Section 24 (1) of the Act.

#### **Notice to Landlord**

35. The Landlord's attention is drawn to the terms of Part 1 at Chapter 4 of the Act and to his specific statutory duties prescribed therein.
36. The Landlord's attention is drawn to the Scottish Government Statutory Guidance issued under the Section 13 of the Act and to the Scottish Government Advice Pack for Private Landlords.
37. The Landlord's attention is drawn to Section 28(1) of the Act which states that a landlord who, without reasonable excuse, fails to comply with an RSEO commits an offence liable on summary conviction to a fine not exceeding Level 3 of the standard scale, and in terms of Section 28(5) of that Act, also commits an offence if he or she enters into a tenancy or occupancy agreement in relation to a house at any time during which a Repairing Standard Enforcement Order has effect in relation to the house.

#### **Direction**

38. In terms of Rule 16 of the Rules, the Tribunal directs the Chamber to serve a copy of this Decision and the RSEO on North Lanarkshire Council, Landlord Registration, Enterprise and Communities, Municipal Buildings, Kildonan Street, Coatbridge, ML5 3LF, in respect of their interest therein.

#### **Appeal**

39. In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed

K Moore

Karen Moore, Chairperson

8 April 2019

8 April 2019

This is the schedule of photographs referred to in the  
foregoing decision under reference FIC/HPC/RT/18/3539 &  
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**Housing and Property Chamber**

First-tier Tribunal for Scotland



# 11 Commonsides St Airdrie ML6

Inspection and Hearing 29 March 2019

Appendix - photos

# Photo sheet 1: roof problems

Front elevation – slipped and missing slates, with hole close to roof ridge



Rear elevation – slipped and missing slates



## Photo sheet 2: condition of gutters and downpipes

Front: downpipe blocked  
and joints rusted



Rear: both downpipes in poor condition

Left side



Right side

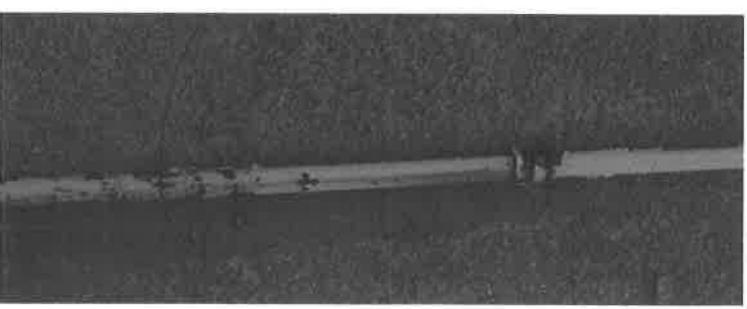
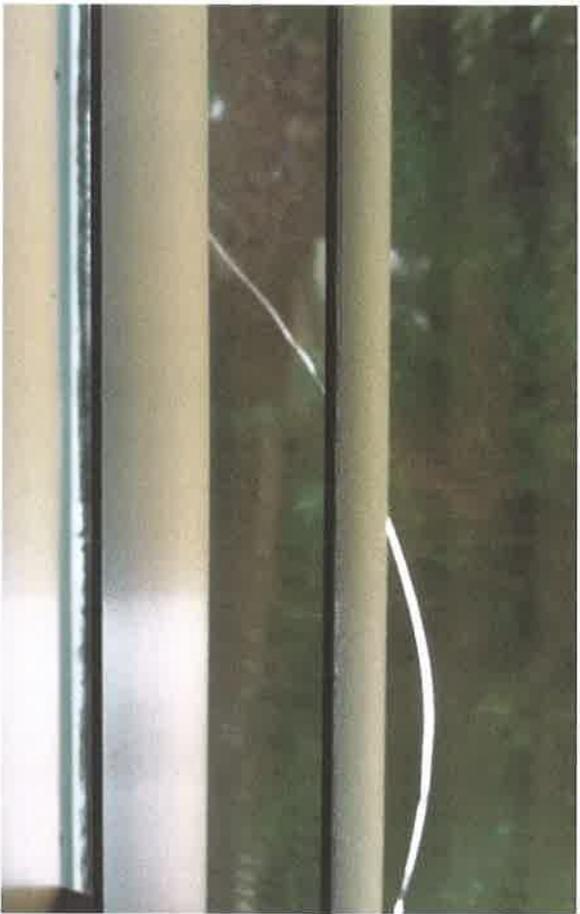


Photo sheet 3: lounge window – cracked glazing units



**Photo sheet 4: lounge window – external  
condition of frame**



Photo sheet 6: finishing above front door lintel



Photo sheet 7: water ingress in spare room



Photo sheet 8: damp in main bedroom



Photo sheet 9: gas boiler – no  
carbon monoxide alarm

